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No. 635

In the Supreme Court of the United States

OCTOBER TERM, 1957.

UNITED STATES EX REL. THE SHOSHONE INDIAN TRIBE, ET AL., PETITIONERS

v.

FRED A. SEATON, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	6
Conclusion	8

CITATIONS

Cases:	
Ash Sheep Co. v. *United States*, 252 U. S. 159	7
United States v. *Mille Lac Shippewas*, 229 U. S. 498	7
Statutes:	
Act of March 3, 1905, 33 Stat. 1016	2
Act of August 21, 1916, 39 Stat. 519	2
Act of June 5, 1920, 41 Stat. 874	3
Act of August 15, 1953, 67 Stat. 592:	
Section 1	3, 6
Section 2	4, 6
Section 4	3
Section 5	4

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OPINION BELOW

The *per curiam* opinion of the court of appeals (Pet. App. 16–18) is reported at 248 F. 2d 154. The memorandum of the district court (Pet. App. 18–19) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 5, 1957. The petition for a writ of certiorari was filed on December 3, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, as held by the courts below, a 1953 Act which "terminat[ed] and extinguish[ed] all of the right, title, estate, and interest, including minerals, gas and oil" of Indian tribes in certain lands and restored those lands to the "public domain for administration, use, occupancy, and disposal under the reclamation and public land laws of the United States," with the proviso that 90 percent of the proceeds "derived under the mining and mineral-leasing laws of the United States" should be paid to the Indians, placed those lands under the Mineral Leasing Act of 1920, as amended, which is generally applicable to public lands of the United States.

STATEMENT

By the Act of March 3, 1905, 33 Stat. 1016, Congress ratified an agreement whereby lands in the Wind River Reservation in Wyoming, which were owned jointly by the Shoshone and Arapahoe Tribes, were ceded to the United States. All of the proceeds from the sale of these lands "under the provisions of the homestead, town-site, coal, and mineral land laws, or by sale for cash" at designated prices were to be held in trust for the tribes. In 1916, Congress authorized the Secretary of the Interior to lease lands within this "ceded" area of the Reservation for oil and gas purposes "under such terms and conditions as shall be by him prescribed." Act of August 21, 1916, 39 Stat. 519. The Act provided a minimum royalty of 1/10, advance rental of not less than $1.00 per acre per year, and that the leases should be

for 20 years with a preferential right of renewal. The proceeds were to be applied first to extinguishment of debts of the Shoshone Tribe to the United States and thereafter applied to the use of the tribe as though secured from the sale of lands under the 1905 Act.

About 332,000 acres of the ceded land were reserved for reclamation purposes and the Riverton Reclamation project was constructed thereon under the Act of June 5, 1920, 41 Stat. 874, 915. By 1953, the tribes had been compensated for about 100,000 acres within the project which had been disposed of under the public land and reclamation laws. In the course of administering the project over the years, problems had accumulated as to compensation of the tribes for lands used for canals, ditches, roads, the Pilot Butte Reservoir and Ocean Lake. Sand, gravel, and other materials had been removed, both for reclamation purposes and for local governmental purposes. To settle all such matters, after an appraisal had been made, the Act of August 15, 1953, 67 Stat. 592, was passed. By Section 4, some 70,000 acres of land outside of the Riverton project were restored to tribal ownership. The remaining 161,000 acres, which is not a solid block but is interspersed with other lands, is the subject matter of this litigation.

The Act provides (Section 1) that $1,009,500 should be credited to the tribes

> and shall be deemed to constitute full, complete, and final compensation, except as provided in section 5 of this Act, for terminating and extinguishing all of the right, title, estate, and

> interest, including minerals, gas and oil, of said Indian tribes and their members of, in and to the lands, interests in lands, and any and all past and future damages arising out of the cession to the United States, pursuant to the Act of March 3, 1905 (33 Stat. 1016) of that part of the former Wind River Indian Reservation lying within the following described boundaries: [description appearing in statute here omitted].

Section 2 restored unentered and vacant lands to the public domain for administration, use, occupancy and disposal under the reclamation and public land laws. Section 5 provided that the United States should deposit to the credit of the tribes 90% of the gross receipts "from all leases, bonuses, royalties, or other proceeds derived under the mining and mineral-leasing laws of the United States" from lands described in section 1.

Subsequently, applications were made, and oil and gas leases were issued, under the Mineral Leasing Act of 1920, as amended, through the Bureau of Land Management of the Department of the Interior. Since the lands were not within a known geologic structure, the leases were issued to the first applicant and not as a result of competitive bidding. In March 1955, counsel for the two tribes wrote letters to the Secretary of the Interior protesting the issuance of such leases. They contended that leasing should be pursuant to the 1916 Act and regulations thereunder, wherein competitive bidding was employed, and it was averred that the tribes were injured by the loss of substantial bonuses. They referred to nine leases

prior to the 1953 Act of 5,100 acres (revised downward in the petition (p. 5) to 4,400 acres) for bonuses totaling $667,171. The Assistant Secretary of the Interior replied, on April 22, 1955, stating that the leases were validly issued and were not subject to cancellation. A few days later, protests were filed with the Director of the Bureau of Land Management, copies were served on 48 lessees and their answers made part of the record. The Secretary, at the request of the tribes, assumed immediate jurisdiction of the matter. The grounds of the protests were considered at length and, by opinion of September 22, 1955, the Secretary rejected them, holding that the leases were validly issued and were not subject to arbitrary cancellation.

This proceeding was instituted by complaint filed November 10, 1955, seeking a preliminary injunction against approval of assignments of leases, a declaration that the lands were not subject to oil and gas leasing under the Mineral Leasing Act and a direction that the Secretary cancel all leases issued under that Act. The district court (McGuire, J.) granted a motion to dismiss on the ground that in the 1953 Act Congress had placed the lands within the public domain and that, accordingly, the 1916 Act no longer applied. The rule that the statute should be liberally construed in favor of the Indians could not, the court held, overcome the "plain meaning of plain words" in the statute and courts "have no power to remake or redraft them" (Pet. App. 19). The court of appeals (Edgerton, C. J., Danaher and Bastian, JJ.) affirmed, *per curiam*, expressing the view

that both the statute and its legislative history showed a plain intention to terminate all rights of the Indians, and that, although statutes terminating Indian property rights should be construed narrowly, "we cannot ignore the intention of Congress where it is perfectly plain" (Pet. App. 17–18).

ARGUMENT

Indisputably, petitioners will receive, under the 1953 Act, 90% of the proceeds from oil and gas leases on the lands purchased from them. The narrow issue is whether such leases are to be issued under the laws generally applicable to the public domain or under the Act of 1916 specially applicable to lands ceded by petitioners in 1905. This issue, we submit, poses no problem. It would, indeed, be inordinately difficult to draft a statute more explicit and unambiguous than the 1953 Act—"all of the right, title, estate, and interest, including minerals, gas and oil" of petitioners is terminated and extinguished (Section 1, Pet. App. 34), and unentered and vacant lands "are hereby restored to the public domain for administration, use, occupancy, and disposal under the reclamation and public lands laws of the United States" (Section 2, Pet. App. 35). Petitioners' argument is not one of construction of the statute at all. It could prevail only by deleting "minerals, gas and oil" from Section 1; and by amending section 2 to provide that "the surface only of all unentered and vacant lands" are restored to the public domain (cf. petition, fn. 8, p. 9). What is more, the provision of Section 5 relating to rental and proceeds

"derived under the mining and mineral-leasing laws of the United States" would have to be rewritten to refer to rentals and proceeds "derived under the Act of 1916."

The "policy" arguments of petitioners do not empower either the Secretary of the Interior or the courts to disregard the laws of Congress and to rewrite the statute. The alleged "compelling issue of public morality" and the claimed "arbitrary injustice of the Secretary's action" (Pet. p. 8) are matters which, if they possessed any validity, could only be settled by Congress. The fact is, as noted both in the Secretary's decision (Pet. App. 28) and the court of appeals' opinion (Pet. App. 16–18), Congress was advised that the bill would terminate all interest of the Indians in the lands, including the minerals, and the attorneys for the Indians at the hearings did not disagree.

There is no conflict with the cases cited by petitioners (pp. 10–14). Those cases do not remotely suggest a lack of Congressional power to extinguish all title of the Indians to particular lands. Instead, as shown by *Ash Sheep Co.* v. *United States*, 252 U. S. 159, 164, the leading case on the subject, the question "depends in each case upon the terms of the agreement or treaty by which the cession was made." Petitioners' own citation (p. 10), *United States* v. *Mille Lac Chippewas*, 229 U. S. 498, answers the claim of conflict. There, the Court, adverting to an argument as to the Indians' understanding of an agreement, stated (p. 508) that "the Indians,

no less than the United States, are bound by the plain import of the act and the agreement".

CONCLUSION

The decision below is clearly correct, and there is no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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